

The City Attorney

City of San Diego

MEMORANDUM

236-6220

DATE: December 26, 1985

TO: Memo to File

FROM: Rudolf Hradecky, Deputy City Attorney

SUBJECT: Waiver of Park Fees for Building Permits to  
Reconstruct Building Destroyed by Fire or Other  
Calamity

This memorandum is to summarize the status of waiver of park fees. Attached are all documents pertaining to the issue for the file.

Following the Normal Heights fire of June 30, 1985, City Manager Report No. 85-506 recommended a waiver policy be adopted to allow persons rebuilding destroyed structures to be exempt from the

Park Fees required for the issuance of a building permit. By "1472" form dated October 23, 1985, the request was made to this office to prepare an ordinance.

Several concerns were raised regarding the retrospective application and refund of previously paid fees. By memorandum of November 13, 1985, it was concluded that any waiver would have to be prospective only. An ordinance (attached as O-86-76) was prepared to accomplish this, to be accompanied by a proposed Report to Council which explained the reasons for prospective application only.

In the interim, two conferences were held to discuss the plight of the Normal Heights victims. It was then concluded that park fees have not been administratively required for the reconstruction of an existing structure.

The principal distinction was whether any portion of the original structure remained standing; if no portion was standing, it was considered to be new construction. By memorandum of November 22, 1985, the City Manager's office determined that the administrative interpretation of San Diego Municipal Code section 96.0403 and Chapter X, Article 2 should treat the rebuilding of a destroyed structure to be reconstruction rather than new construction. This interpretation obviated the need for revision of any ordinance, and also permitted the concept of "payments in

error" pursuant to San Diego Municipal Code section 22.1706 to be applied to the Normal Heights victims.

It is noted that none of the particular ordinances disfavors this treatment, since each can be interpreted not to apply to replacement housing, but only to construction for new occupancy.

It is concluded that further ordinance revision is not necessary at this time, but will be considered during a future revision to the Park Fee Ordinance. This is concurred in by the City Manager and the Park and Recreation Department.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:mem:645

Attachments

cc Fred Conrad

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MS-85-7